

Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address Lynda T. Bui – Bar No. 201002 Brooke S. Thompson – Bar No. 349216 SHULMAN BASTIAN FRIEDMAN & BUI LLP 100 Spectrum Center Drive, Suite 600 Irvine, California 92618 Telephone: (949) 340-3400 Facsimile: (949) 340-3000 Email: LBui@shulmanbastian.com BThompson@shulmanbastian.com	FOR COURT USE ONLY
UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA - RIVERSIDE DIVISION	
In re: EXCEL INDUSTRIES, INC., Debtor(s).	CASE NO.: 6:23-bk-12477-MH CHAPTER: 7 <div style="text-align: center; font-weight: bold; font-size: 1.2em;">NOTICE OF SALE OF ESTATE PROPERTY</div>

Sale Date: August 22, 2023 (tentative)	Time: 10:00 a.m. (tentative)
Location: On site viewing August 21, 2023 from 10:00 a.m. - 4:00 p.m.; Viewing Site: 1601 Fremont Court, Ontario, California	

Type of Sale: ☒ Public ☐ Private **Last date to file objections:** August 2, 2023

Description of property to be sold: See Attached Auction Motion

Terms and conditions of sale: See Attached Statement of Information in Compliance with LBR 6004-1(c)(3).

Proposed sale price: to be determined - online public auction sale

This form is mandatory. It has been approved for use in the United States Bankruptcy Court for the Central District of California.

Overbid procedure (if any): Online public auction sale. See attached Statement of Information and Auction Motion

If property is to be sold free and clear of liens or other interests, list date, time and location of hearing:

August 16, 2023 at 11:00 a.m.

United States Bankruptcy Court

Courtroom 301

3420 Twelfth Street

Riverside, CA 92501

Contact person for potential bidders (include name, address, telephone, fax and/or email address):

Lynda T. Bui, Esq.

Shulman Bastian Friedman & Bui LLP

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Irvine, CA 92618

Telephone: (949) 340-3400

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Date: 07/26/2023

<p>Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address</p> <p>Lynda T. Bui – Bar No. 201002 Brooke S. Thompson – Bar No. 349216 SHULMAN BASTIAN FRIEDMAN & BUI LLP 100 Spectrum Center Drive, Suite 600 Irvine, California 92618 Telephone: (949) 340-3400 Facsimile: (949) 340-3000 Email: LBui@shulmanbastian.com; BThompson@shulmanbastian.com</p> <p><input type="checkbox"/> Individual appearing without attorney <input checked="" type="checkbox"/> Attorney for: Charles W. Daff, Chapter 7 Trustee</p>	<p>FOR COURT USE ONLY</p>
<p style="text-align: center;">UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA - RIVERSIDE DIVISION</p>	
<p>In re:</p> <p>EXCEL INDUSTRIES, INC.,</p> <p style="text-align: right;">Debtor(s).</p>	<p>CASE NO.: 6:23-bk-12477-MH CHAPTER: 7</p>
	<p>NOTICE OF MOTION FOR:</p> <p>AN ORDER: (1) AUTHORIZING THE TRUSTEE TO CONDUCT AN AUCTION SALE OF PERSONAL PROPERTY ASSETS OF THE ESTATE FREE AND CLEAR OF LIENS PURSUANT TO BANKRUPTCY CODE SECTIONS 363(b) and (f); (2) APPROVING PAYMENT OF COMPENSATION AND EXPENSES TO THE AUCTIONEER; AND (3) GRANTING RELATED RELIEF INCLUDING USE OF SALE PROCEEDS TO PAY ACTUAL COSTS INCURRED</p> <p>(Specify name of Motion)</p>
	<p>DATE: 08/16/2023 TIME: 11:00 am COURTROOM: 301 PLACE: 3420 Twelfth Street Riverside, CA 92501</p>

1. TO (*specify name*): THE OFFICE OF THE U.S. TRUSTEE, THE DEBTOR, CREDITORS AND PARTIES IN INTEREST
2. NOTICE IS HEREBY GIVEN that on the following date and time and in the indicated courtroom, Movant in the above-captioned matter will move this court for an Order granting the relief sought as set forth in the Motion and accompanying supporting documents served and filed herewith. Said Motion is based upon the grounds set forth in the attached Motion and accompanying documents.
3. **Your rights may be affected.** You should read these papers carefully and discuss them with your attorney, if you have one. (If you do not have an attorney, you may wish to consult one.)

4. **Deadline for Opposition Papers:** This Motion is being heard on regular notice pursuant to LBR 9013-1. If you wish to oppose this Motion, you must file a written response with the court and serve a copy of it upon the Movant or Movant's attorney at the address set forth above no less than fourteen (14) days prior to the above hearing date. If you fail to file a written response to this Motion within such time period, the court may treat such failure as a waiver of your right to oppose the Motion and may grant the requested relief.
5. **Hearing Date Obtained Pursuant to Judge's Self-Calendaring Procedure:** The undersigned hereby verifies that the above hearing date and time were available for this type of Motion according to the judge's self-calendaring procedures.

Date: 07/26/2023

SHULMAN BASTIAN FRIEDMAN & BUI LLP
Printed name of law firm

/s/ Lynda T. Bui
Signature

Lynda T. Bui
Printed name of attorney

Statement of Information in Compliance with LBR 6004-1(c)(3)

<u>LBR 6004-1(c)(3) Requirement</u>	<u>Information</u>
<p><i>LBR 6004-1(c)(3)(A)</i> Date, Time, and Place of hearing on the proposed sale:</p>	<p>Auction Motion Hearing: Date: August 16, 2023 at 11:00 a.m. Hearing Place: U.S. Bankruptcy Court Courtroom 301 3420 Twelfth Street Riverside, CA 92501</p>
<p><i>LBR 6004-1(c)(3)(B)</i> Name and address of the proposed buyer:</p>	<p>To be determined – online public auction sale. A Report of Auctioneer will be filed with the Court following conclusion of the auction which will identify the date of the sale, each item sold, the sale price and the name, address, and telephone number of the purchaser.</p>
<p><i>LBR 6004-1(c)(3)(C)</i> Description of the property to be sold:</p>	<p>The personal property assets to be included in the proposed auction are generally described as (i) metal working equipment; (ii) tooling and tools; (iii) forklift; (iv) office furniture and office machinery (collectively, the “Assets”).</p>
<p><i>LBR 6004-1(c)(3)(D)</i> Terms and conditions of the proposed sale, including the price and all contingencies:</p>	<ul style="list-style-type: none"> • The Trustee proposes to liquidate the Assets by online auction to the highest bidder. The online auction will be scheduled to commence approximately six (6) days after the Court has approved the Auction Motion. The online auction is tentatively scheduled for August 22, 2023 at 10:00 a.m. with a preview/inspection of the Assets by prospective buyers to take place on August 21, 2023 from 10:00 a.m. – 4:00 -p.m. at the Debtor’s business premises located at 1601 Fremont Court, Ontario, California. • The sale will be without limit and without reserve, subject only to minimum opening bid amounts established by the Auctioneer, based on Auctioneer’s expert judgment. • Auctioneer will offer the Assets to buyers in “as-is, where-is” condition, without representations or warranties. • If necessary, the Auctioneer may require bidders to post an appropriate deposit as a prerequisite to bid. • The Auctioneer will require buyers to sign a terms sheet, which will include terms to protect Auctioneer and Seller from buyer payment defaults, damage to persons or property onsite, claims regarding the Assets, etc. • Auctioneer will accept from buyers the following forms of payment: cash, credit card (a 3% fee will be charged to all buyers), cashiers’ checks, guaranteed checks and wire transfer as payment for the property sold. • Auctioneer shall be responsible to collect and remit any applicable sales tax.
<p><i>LBR 6004-1(c)(3)(E)</i> Whether the proposed sale is free and clear of liens, claims or interests, or subject to them, and a description of all such liens, claims or interests:</p>	<p>The sale will be free and clear of liens pursuant to Bankruptcy Code §§ 363(b)(1) and 363(f)(4). The Trustee seeks authority to conduct the auction sale free and clear of unresolved liens and encumbrances, with disputed liens to attach to the net proceeds of the sale in the same validity and priority as prior to the sale. The Secured Creditors have consented to the sale with a distribution of 50% of the net proceeds.</p>
<p><i>LBR 6004-1(c)(3)(F)</i> Whether the proposed sale is subject to higher and better bids:</p>	<p>The Trustee proposes to liquidate the Assets by online auction to the highest bidder.</p>

<u>LBR 6004-1(c)(3) Requirement</u>	<u>Information</u>
<p><i>LBR 6004-1(c)(3)(G)</i> Consideration to be received by the Estate, including estimated commissions, fees and other costs of sale:</p>	<p>The Trustee proposes to liquidate the Assets by auction to the highest bidder. The Trustee proposes to employ Fischer Auction Co., Inc. as the auctioneer (“<u>Auctioneer</u>”). The Assets to be sold at auction have a gross liquidation value of approximately \$120,000.00 and after payment of costs of the sale, the net proceeds for the Estate are anticipated to exceed be approximately \$83,400.00, which will be split fifty percent (50%) to Secured Creditors and fifty percent (50%) to the Estate of which fifteen percent (15%) will be paid to unsecured creditors.</p> <p>10% Buyer’s Premium charged to each purchaser, an additional 3% charged to each purchaser and paid to Proxibid for online bidding services, and an additional 3% will be charged to each purchaser who pays with a credit card. The Buyer’s Premium will be collected by the Auctioneer and along with the auction proceeds turned over to the Trustee no later than seven calendar days after the conclusion of the auction. Payment of the Buyer’s Premium by the Estate to the Auctioneer is subject to the Auctioneer providing the Trustee a with Report of Auctioneer within twenty-one (21) days after the conclusion of the auction in compliance with the requirements of the United States Trustee’s Supervisory Instruction No. 10.</p> <p>Auctioneer will be reimbursed its reasonable costs for advertising, labor, permits, etc. in conducting the auction. Such costs are estimated to be no more than \$14,600.00 for labor and advertising.</p>
<p><i>LBR 6004-1(c)(3)(H)</i> If authorization if sought to pay commission, the identity of the auctioneer, broker, or sales agent and the amount or percentage of the proposed commission to be paid:</p>	<p>See above.</p>
<p><i>LBR 6004-1(c)(3)(I)</i> A description of the estimated or possible tax consequences to the Estate, if known, and how any tax liability generated by the sale of the property will be paid:</p>	<p>Auctioneer shall be responsible to collect and remit any applicable sales tax.</p>
<p><i>LBR 6004-1(c)(3)(J)</i> Date which objection must be filed and served:</p>	<p>Objections, if any, must be filed and served 14 days prior to the Hearing Date (or by August 2, 2023).</p>

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6 Proposed Attorneys for Charles W. Daff,
Chapter 7 Trustee
7

8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA, RIVERSIDE DIVISION**
10

11 In re

12 **EXCEL INDUSTRIES, INC.,**

13 Debtor.
14

Case No. 6:23-bk-12477-MH

Chapter 7

**CHAPTER 7 TRUSTEE’S MOTION FOR AN
ORDER:**

(1) **AUTHORIZING THE TRUSTEE TO
CONDUCT AN AUCTION SALE OF
PERSONAL PROPERTY ASSETS OF THE
ESTATE FREE AND CLEAR OF LIENS
PURSUANT TO BANKRUPTCY CODE
SECTIONS 363(b) AND (f);**

(2) **APPROVING PAYMENT OF
COMPENSATION AND EXPENSES TO THE
AUCTIONEER; AND**

(3) **GRANTING RELATED RELIEF
INCLUDING USE OF SALE PROCEEDS TO
PAY ACTUAL COSTS INCURRED;**

**MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF
CHARLES W. DAFF IN SUPPORT**

Hearing:

Date: August 16, 2023

Time: 11:00 a.m.

Place: Courtroom 301

U.S. Bankruptcy Court
3420 Twelfth Street
Riverside, CA 92501

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**TO THE HONORABLE MARK D. HOULE, UNITED STATES BANKRUPTCY
JUDGE, THE OFFICE OF THE UNITED STATES TRUSTEE, THE DEBTOR,
CREDITORS AND PARTIES-IN-INTEREST:**

I. INTRODUCTION

Charles W. Daff (“**Trustee**”), the Chapter 7 trustee for the bankruptcy estate (“**Estate**”) of Excel Industries, Inc. (“**Debtor**”), brings this *Motion for an Order: (1) Authorizing the Trustee to Conduct an Auction Sale of Personal Property Assets of the Estate Free and Clear of Liens Pursuant to Bankruptcy Code Sections 363(b) and (f); (2) Approving Payment of Compensation and Expenses to the Auctioneer; and (3) Granting Related Relief Including Use of Sale Proceeds to Pay for Actual Costs Incurred* (“**Auction Motion**”).

The Trustee has determined that the sale of the Debtor's Assets¹ through an online auction will provide the most benefit for the Estate and its creditors. In addition, the Assets are located on the Business Premises under the Lease that currently provides for rental payments of \$13,054.37 per month. The Trustee needs to immediately liquidate the Assets, to expedite vacating the Business Premises and returning the Business Premises to the Landlord. In that regard, the Trustee has entered into an agreement with the Landlord to allow the Landlord to keep the security deposit and to be paid \$5,000.00 from the sale of the Assets through the auction.

The Trustee is advised by the proposed Auctioneer that the Assets to be sold at auction have a gross liquidation value of approximately \$120,000.00 and after payment of costs of the sale, the net proceeds for the Estate are anticipated to exceed be approximately \$83,400.00, which will be split fifty percent (50%) to Secured Creditors and fifty percent (50%) to the Estate of which fifteen percent (15%) will be paid to unsecured creditors. Based on good business reasons outlined below, the Trustee respectfully requests that the Court approve the Auction Motion.

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¹ Capitalized terms are defined below.

1 **II. RELEVANT FACTS**

2 **A. The Bankruptcy Case**

3 The Debtor filed a voluntary petition under Chapter 7 of the Bankruptcy Code on June 9,
4 2023 ("**Petition Date**"). Charles W. Daff is the duly appointed, qualified and acting Chapter 7 trustee
5 for the Estate. A true and correct copy of the Debtor's Schedule A/B filed on June 9, 2023 (docket
6 number 1) is attached as **Exhibit 1** to the Declaration of Charles W. Daff ("**Daff Declaration**").

7 The Debtor's Schedules indicate \$455,087.01 in secured claims, \$22,745.36 in priority
8 claims and general unsecured claims of \$11,832.64. A UCC-1 search, however, indicates that there
9 were more liens than scheduled. *See* **Exhibit 4**.

10 The Debtor manufactures and assembles firearms and miscellaneous firearm accessories.
11 The Debtor's personal property includes metal working equipment, tooling, tools, forklift, office
12 furniture, and office machinery.

13 The personal property assets to be included in the online auction sale are located at the
14 Debtor's business premises located at 1601 Fremont Court, Ontario, California ("**Business**
15 **Premises**") leased by the Debtor prior to the Petition Date under a Standard Industrial/Commercial
16 Single-Tenant Lease – Gross ("**Lease**") with the Debtor's landlord, Don Mosco Trust ("**Landlord**").
17 The Trustee needs to liquidate the personal property in order to return the Business Premises and
18 pay any outstanding rent as negotiated between the Trustee and the Landlord and approved by the
19 Court.

20 **B. The Assets to be Sold at Auction**

21 The personal property assets to be included in the proposed online auction sale are generally
22 described as (i) metal working equipment; (ii) tooling and tools; (iii) forklift; (iv) office furniture
23 and office machinery (collectively, the "**Assets**"). The proposed Auctioneer has inspected the
24 Assets and has advised that they have a total estimated gross liquidation value of approximately
25 \$120,000.00. Through the competitive bidding of a public online auction sale, it is anticipated that
26 the Trustee will receive the best and highest value for the Assets and therefore, the ultimate sale
27 price of the Assets will be fair and reasonable.

28 ///

The Assets are secured by the following liens:

Party	Lien Type	Filed
Internal Revenue Service (“IRS”)	Federal Tax Lien	2/1/2017
U.S. Small Business Administration (“SBA”)	Financing Statement	5/27/2020
Alcohol and Tobacco Tax and Trade Bureau (“TTB”)	Federal Tax Lien	6/5/2023

Collectively, the IRS, SBA and TTB shall be referred to as “**Secured Creditors**”. The Trustee seeks authority to conduct the auction sale free and clear of all liens and encumbrances, with any liens and interests against the Assets that are not released, paid in full, or otherwise resolved through the sale, if any, to attach to the sale proceeds with the same force, effect, validity, and priority as such liens or interests had with respect to the Assets prior to the sale, pending agreement with the lienholder or further Court order.

C. The Proposed Auction Date, Proposed Auctioneer and Auction Contract

The Trustee proposes to liquidate the Assets by online auction to the highest bidder. The online auction will be scheduled to commence shortly after the Court has approved the Auction Motion. The online auction is tentatively scheduled for August 22, 2023 at 10:00 a.m. with a preview/inspection of the Assets by prospective buyers to take place at the Business Premises on August 21, 2023 from 10:00 a.m. to 4:00 p.m.

The Trustee intends to file his *Application for an Order Authorizing the Trustee to Employ Fischer Auction Co. Inc. as Auctioneer* as soon as practicable for the auctioneer to coordinate the online auction pursuant to the terms of the Auction Contract, a true and correct copy of which is attached as **Exhibit 2** to the Daff Declaration.

The Auctioneer has a blanket bond in the amount of \$250,000.00 made payable to the United States of America, which is on file with the Bankruptcy Court. Attached as **Exhibit 3** to the Daff Declaration is copy of the blanket bond. The total amount of assets the Auctioneer is currently holding for auction does not total more than \$250,000.00.

The Auctioneer has advised the Trustee that it maintains liability insurance for lost or stolen property which protects any and all property under the Auctioneer's control which is secured, transported and stored at the Auctioneer's auction location until sold.

The principal terms of the Auction Contract and proposed auction sale are as follows:

Sale Format	Public online auction to be accessed via http://fischerauctions.proxibid.com
Sale Date and Time	The online auction will be scheduled to commence shortly after the Court has approved the Auction Motion. The online auction is tentatively scheduled for August 22, 2023 at 10:00 a.m.
Viewing Site	Interested parties may preview/inspect the Assets at the Business Premises on August 21, 2023 from 10:00 a.m. to 4:00 p.m.
Assets	Metal working equipment, tooling, tools, forklift, office furniture, and office machinery.
Marketing	Newspaper, online publications, direct mail and email blast. Advertising to commence no later than two weeks prior to the auction sale date. Advertising to be targeted to the demographic area of the Debtor's industry so as to fully expose the auction sale.
Auctioneer's Costs	Auctioneer will be reimbursed its reasonable costs for advertising, labor, permits, etc. in conducting the auction. Such costs are estimated to be no more than \$14,600.00 for labor and advertising.

Auctioneer's
Compensation

The Auctioneer will conduct the auction sale based solely upon the following compensation: (i) commission to be 10% of the gross proceeds.

As is standard in the industry, there will be a 10% Buyer's Premium charged to each purchaser, an additional 3% charged to each purchaser and paid to Proxibid for online bidding services, and an additional 3% will be charged to each purchaser who pays with a credit card. The Firm has no ownership interest in Proxibid and all Assets will be sold through Proxibid.

The Buyer's Premium will be collected by the Auctioneer and along with the auction proceeds turned over to the Trustee no later than seven calendar days after the conclusion of the auction. Payment of the Buyer's Premium by the Estate to the Auctioneer is subject to the Auctioneer providing the Trustee with a Report of Auctioneer ("Auction Report") within twenty-one (21) days after the conclusion of the auction in compliance with the requirements of the United States Trustee's Supervisory Instruction No. 10.²

Within seven days of the Trustee's receipt of the Auction Report, the Trustee shall file it with the Court along with a declaration stating that the Trustee has compared the Auction Report to the list of items/lots sold, the Auction Report is satisfactory, the gross funds have been turned over to the Trustee, and the Auctioneer has been compensated pursuant to the terms of the Auction Contract and the Auction Motion as approved by the Court. Provided an Order has been entered approving payment of the Auctioneer's compensation and expenses, the Trustee shall compensate the Auctioneer for the Court approved fees and expenses within seven calendar days of the Trustee's receipt of the Auction Report.

² The Auction Report must include at a minimum: the date of the sale, each item sold, the sale price and the name, address, and telephone number of the purchaser - in the case of lots, a brief description of each lot sold as well as the sale price and purchaser thereof, the gross proceeds of sale, a statement that the gross proceeds have been turned over to the Trustee, and a descriptive list of the items that were not sold but which were returned to the Trustee. The Supervisory Instruction No. 10 also provides that any and all auction proceeds are to be turned over to the Trustee within seven days of conclusion of the auction and that the Auction Report is due within twenty-one days after conclusion of the auction.

1 2 3 4 5 6 7 8 9	<table><tr><td>Additional terms</td><td><ul style="list-style-type: none">• The sale will be without limit and without reserve, subject only to minimum opening bid amounts established by the Auctioneer, based on Auctioneer's expert judgment.• Auctioneer will offer the Assets to buyers in "as-is, where-is" condition, without representations or warranties.• If necessary, the Auctioneer may require bidders to post an appropriate deposit as a prerequisite to bid.• The Auctioneer will require buyers to sign a terms sheet, which will include terms to protect Auctioneer and Seller from buyer payment defaults, damage to persons or property onsite, claims regarding the Assets, etc.• Auctioneer will accept from buyers the following forms of payment: cash, credit card (a 3% fee will be charged to all buyers), cashiers' checks, guaranteed checks and wire transfer as payment for the property sold.• Auctioneer shall be responsible to collect and remit any applicable sales tax.</td></tr></table>	Additional terms	<ul style="list-style-type: none">• The sale will be without limit and without reserve, subject only to minimum opening bid amounts established by the Auctioneer, based on Auctioneer's expert judgment.• Auctioneer will offer the Assets to buyers in "as-is, where-is" condition, without representations or warranties.• If necessary, the Auctioneer may require bidders to post an appropriate deposit as a prerequisite to bid.• The Auctioneer will require buyers to sign a terms sheet, which will include terms to protect Auctioneer and Seller from buyer payment defaults, damage to persons or property onsite, claims regarding the Assets, etc.• Auctioneer will accept from buyers the following forms of payment: cash, credit card (a 3% fee will be charged to all buyers), cashiers' checks, guaranteed checks and wire transfer as payment for the property sold.• Auctioneer shall be responsible to collect and remit any applicable sales tax.
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11 **D. Tax Consequences**

12 Any sales taxes from the sale of the Assets will be paid by the purchaser of the Assets at the
13 auction. The Trustee has consulted with the proposed accountant and there will not be any capital
14 gains tax anticipated from the sale of the Assets.

15 **E. Request for Authorization to Use the Auction Proceeds to Pay the Auctioneer's**
16 **Compensation and Expenses and to Reimburse the Trustee for his Actual Costs**

17 Through this Auction Motion, the Trustee requests the Court authorize the use of the
18 proceeds of the auction sale to make Court approved disbursements to the proposed Auctioneer
19 pursuant to the terms of the Auction Contract and this Auction Motion as described above.

20 **F. Request to Authorize the Trustee to execute Documents to Transfer Title of Assets**
21 **Included in the Auction Sale**

22 Through this Auction Motion, the Trustee seeks authority to execute the appropriate
23 documents to facilitate the transfer of title of any assets that are included in the auction sale.

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G. Rejection of the Lease for the Debtor's Business Premises

The Lease with the Landlord provides that rent due the Landlord is \$13,054.37 per month. The proposed online auction sale will be conducted shortly after the Court has approved the Auction Motion and is tentatively scheduled for August 22, 2023 at 10:00 a.m. The Trustee requests authorization to terminate and reject the Lease effective as of August 31, 2023.

Once the auction sale has concluded, the Lease will have no benefit for the Estate and creditors. As such, the Trustee has determined that it is in the best interest of the Estate and creditors that the Trustee terminate and reject the Lease so that the Estate's liability can be released and the accrual of administrative expenses can be stopped. Entry of an order authorizing the Trustee to terminate and reject the Lease will assist Trustee in the reduction of administrative costs.

III. LEGAL AUTHORITIES

A. There are Good Business Reasons for the Sale and the Sale is in the Best Interest of the Estate.

The duties of a trustee in a Chapter 7 filing are enumerated in 11 U.S.C. §704, which provides in relevant part as follows:

(a) The trustee shall—

(1) collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interests of parties in interest;

(2) be accountable for all property received;

11 U.S.C. §704(a).

Further, the Trustee, after notice and hearing, may sell property of the estate. 11 U.S.C. § 363(b). Courts ordinarily will approve a proposed sale if there is a good business reason for the sale and the sale is in the best interests of the estate. *In re Wilde Horse Enterprises, Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991); *In re Lionel Corp.*, 722 F.2d 1063, 1069 (2d Cir. 1983).

The Trustee has made a business decision and believes that the sale of the Assets by the proposed auction sale is the best available alternative for maximizing the value of the Assets for the Estate and creditors. The auction sale is the most efficient and cost effective way to liquidate the Assets and will allow the Estate to receive the most value as compared to attempting to sell on a

1 piecemeal basis. The Trustee has been advised by the proposed Auctioneer that the auction may
2 generate net funds (after costs of sale) of approximately \$83,400.00 as follows:

3	Estimated Gross Sale Projection	\$120,000.00
4	<i>Less</i> Auctioneer expense	
5	reimbursement (estimate)	(\$14,600.00)
6	<i>Less</i> 10% commission charged to	
7	Estate	(\$12,000.00)
8	<i>Less</i> Estimated Landlord/Utility and	
9	other Administrative Expenses	(\$10,000.00)
10	Estimated Net Recovery	\$83,400

11 Through the competitive bidding of an online public auction, it is anticipated that the Trustee
12 will receive the best and highest value for the Assets and therefore, the ultimate sale price will be
13 fair and reasonable. In addition, the Assets are located on the Business Premises and is accruing
14 significant rent. The Trustee is in the process of discussing providing the landlord an administrative
15 claim for the storage of the Assets until the conclusion of the Auction and turning over possession.
16 The Trustee needs to liquidate the Assets as quickly as possible in order to return the Business
17 Premises to the Landlord and stop the accrual of administrative rent charges that would be
18 detrimental to unsecured creditors. Thus, based on good business reasons, approval of this Auction
Motion would serve the best interests of the Estate and its creditors.

19 Therefore, the Trustee respectfully submits that, if this Court applies the good business
20 reason standard suggested by the Second Circuit in *Lionel*, the sale should be approved.

21 **B. The Proposed Sale Should be Allowed Free and Clear of Liens**

22 Bankruptcy Code Section 363(f) allows a trustee to sell property of the bankruptcy estate
23 “free and clear of any interest in such property of an entity,” if any one of the following five
24 conditions is met:

25 (1) applicable non-bankruptcy law permits a sale of such
26 property free and clear of such interest;

27 (2) such entity consents;

28 ///

///

(3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

(4) such interest is in bona fide dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept money satisfaction of such interest.

11 U.S.C. § 363(f).

Section 363(f) is written in the disjunctive and thus only one of the enumerated conditions needs to be satisfied for Court approval to be appropriate. The Trustee proposes to sell under sections 363(f)(2) and (4).

1. Section 363(f)(2) – Secured Creditors Consent to the Sale

Section 363(f)(2) of the Bankruptcy Code provides that the trustee may sell property of the estate free and clear of any lien on such property if such entity consents. Currently and based on a UCC-1 search, the Assets are completely encumbered by liens in favor of Secured Creditors.

The Trustee has been in communication with Secured Creditors and they have consented to the sale with the following distribution from the net proceeds: fifty percent (50%) to Secured Creditors, fifteen percent (15%) to priority creditors, and thirty-five percent (35%) to the trustee for administrative fees. *See Exhibit 5.*

2. Section 363(f)(4) – Bona Fide Dispute

Alternatively and out of an abundance of caution, the Trustee can also sell the Assets under subsection (f)(4). A bona fide dispute has been defined by *In re Atwood*, 124 B.R. 402 (Bankr. S.D. Ga. 1991) as a “genuine issue of material fact that bears upon the debtor’s liability, or meritorious contention as to the application of law to undisputed facts.” *Id.* at 407. In *In re Milford Group, Inc.*, 150 B.R. 904 (Bankr. M.D. Pa. 1992), the court stated it need not resolve a bona fide dispute, but must determine whether the issues presented are genuine as to the existence of a bona fide dispute. In doing so, the *Milford* Court found that the debtor had met its burden to establish cause for the Court to allow for the sale of the property, free and clear of liens. Requiring resolution of those issues before the sale may likely take substantial time, effort and expense by the parties.

///

1 With respect to the IRS lien and to the extent that there are any fines, penalties as defined
2 under Bankruptcy Code section 726(a)(4), the Trustee asserts that the Estate can avoid them under
3 Bankruptcy Code section 724(a). The Estate can also subordinate the TTB lien as it is a tax lien that
4 can be subordinated under Bankruptcy Code section 724(b). In addition and with respect to the
5 TTB lien, it was recorded three days before the Petition Date. Arguably, it is a preference. The
6 Trustee is, however, mindful that a tax lien is not avoidable if it has been perfected according to
7 applicable tax law and regulations at the time a bankruptcy petition is filed. *In re Hudgins*, 967 F.2d
8 973 (4th Cir. 1992). However, the burden is on TTB to show that the recordation of the lien is
9 appropriate.

10 Notwithstanding, the Trustee believes that the Estate and Secured Creditors have reached an
11 agreement to split the net proceeds so this relief is being requested out of an abundance of caution.
12 The need to resolve disputed liens should not hinder, delay or in any way inhibit the Trustee's efforts
13 to maximize the value of the sale of the Assets for the Estate. Unresolved liens will be the subject
14 of a bona fide dispute as the Trustee believes there are no liens impacting the Assets. Pursuant to
15 Bankruptcy Code §§ 363(b)(1) and 363(f)(4), the Trustee seeks to sell the Assets free and clear of
16 unresolved liens with such disputed liens to attach to the proceeds of the sale in the same validity
17 and priority as prior to the sale pending agreement with the lienholder or further Court order. Thus,
18 approval for the sale free and clear of the lien as a disputed lien pursuant to Bankruptcy Code §§
19 363(f)(4) is appropriate.

20 **A. Secured Creditors' Collateral is Subject to Surcharge by the Trustee**

21 Bankruptcy Code § 506(c) provides that:

22 [t]he trustee may recover from property securing and allowed secured
23 claim the reasonable, necessary costs and expenses of preserving, or
24 disposing of, such property to the extent of any benefit to the holder
of such claim.

25 Surcharge of the Secured Creditors' collateral is appropriate in this case for the Trustee's
26 costs in disposing of the Assets, including the liability of the Estate incurred in connection with
27 seeking Court approval of the sale and the pre-closing work under the Purchase Agreement. That
28

1 work primarily benefits the Secured Creditors. Consequently, the Secured Creditors lien must be
2 subject to the surcharge powers of Bankruptcy Code § 506(c).

3 The professionals of the Estate believe that their diligent efforts to preserve and dispose of
4 the Secured Creditors' collateral clearly has benefited the collateral. Moreover, the Trustee believes
5 all of the efforts of the professionals in this case were directly related to the preservation and
6 eventual disposition of the Secured Creditors' collateral. Thus, surcharging the collateral under
7 Bankruptcy Code § 506(c) is appropriate. To the extent that the contemplated agreement with
8 Secured Creditors is not reached, the Trustee further seeks Court approval of a Bankruptcy Code §
9 506(c) surcharge in an amount to be determined by the Court against the Secured Creditors' liens
10 for the costs the Estate has incurred in the maintenance of the Secured Creditors' collateral as well
11 as with the preservation and disposition of such collateral. Surcharge of the Secured Creditors'
12 collateral is appropriate in this case for the Trustee's costs in disposing of the Assets, including the
13 liability of the Estate incurred in connection with the seeking Court approval of the sale and closing
14 work. That work primarily benefits the Secured Creditors. Moreover, if the Secured Creditors'
15 moved to enforce their lien against the Property they would very likely not be able to realize the
16 value from their collateral that the Trustee is achieving through the sale through the auction. As
17 such, surcharge pursuant to Section 506(c) is appropriate in this case.

18 **C. Subject to Court Approval, the Trustee May Reject Any Executory Contract or**
19 **Unexpired Lease of the Estate**

20 Bankruptcy Code Section 365(a) provides, in relevant part:

21 . . . the trustee, subject to the court's approval, may assume or reject
22 any executory contract or unexpired lease of the debtor.

23 Business judgment dictates that leases should be terminated and rejected if they have no
24 significant benefit for the Estate and its creditors. The Lease has no benefit to the Estate after the
25 Auction, and the Trustee wishes to terminate and reject the Lease with the Landlord effective as of
26 August 31, 2023. Notwithstanding, the Trustee is working with the Landlord on the administrative
27 claim and turning over possession of the Business Premise.

D. The Court has Authority to Waive the Fourteen-Day Stay of Sale

Federal Rule of Bankruptcy Procedure 6004(h) provides that “[a]n order authorizing the use, sale or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the Court orders otherwise.” Fed. Rule Bankr. P. 6004(h). The Trustee desires to conduct and close the auction sale as soon as practicable after entry of an order approving the Auction Motion. Accordingly, the Trustee requests that the Court, in the discretion provided it under Federal Rule of Bankruptcy Procedure 6004(h), waive the fourteen-day stay requirement.

IV. CONCLUSION

Based upon the foregoing, the Trustee respectfully submits that good cause exists for granting the Auction Motion and requests that the Court enter an order as follows:

1. Approving the online auction sale of the Assets, to the highest bidder, free and clear of all liens and encumbrances with any liens and interests against the Assets that are not released, paid in full, or otherwise resolved through sale, if any, to attach to the sale proceeds with the same force, effect, validity, and priority as such liens or interests had with respect to the Assets prior to the sale, pending agreement with the lienholder or further Court order.

2. Authorizing the Trustee to execute the appropriate documents to facilitate the transfer of title to any vehicles or other assets that are included in the auction sale.

3. Approving and authorizing payment of the Auctioneer’s compensation and expenses pursuant to the terms of the Auction Contract and this Auction Motion.

4. Authorizing the Trustee to use the proceeds of the auction sale to make Court approved disbursements to the proposed Auctioneer pursuant to the terms of the Auction Contract and this Auction Motion.

5. Authorizing payment to the Auctioneer without further order of this Court upon completion of the requirements of the United States Trustee’s Supervisory Instructions No. 10.

6. If appropriate, authorizing a surcharge of Secured Creditors’ liens under the Bankruptcy Code § 506(c) in an amount to be determined by the Court which shall be paid to the Trustee on behalf of the Estate.

///

1 7. Authorizing the Trustee to terminate and reject the real property lease for Debtor's
2 business premises located at 1601 Fremont Court, Ontario, California, effective as of August 31,
3 2023.

4 8. Directing that the fourteen day stay of the order approving the Auction Motion as
5 provided by Federal Rules of Bankruptcy Procedure 6004(h), or any other applicable rules, shall not
6 apply and that absent judicial imposition of a stay of the Court order approving the Auction Motion
7 pending appeal, the Trustee may immediately consummate the actions that are approved by such
8 Court order.

9 9. For such other and further relief as the Court deems just and proper under the
10 circumstances of this case.

11 Dated: July 26, 2023

Respectfully submitted,

12 **SHULMAN BASTIAN FRIEDMAN & BUI LLP**

13 */s/ Lynda T. Bui*

14 Lynda T. Bui
15 Brooke S. Thompson
16 Proposed Attorneys for Charles W. Daff, Chapter 7 Trustee
for the bankruptcy estate of Excel Industries, Inc.

DECLARATION

DECLARATION OF CHARLES W. DAFF

I, Charles W. Daff, declare:

1. I am the Chapter 7 trustee for the bankruptcy estate of *Excel Industries, Inc.* (“Debtor”), Case No. 6:23-bk-12477-MH. I have personal knowledge of the matters set forth in this Declaration and if called upon to testify, I could and would testify competently to the matters.

2. I am familiar with the Debtor’s bankruptcy proceeding and make this Declaration in support of my *Motion for an Order Authorizing the Trustee to: (1) Conduct an Auction Sale of Personal Property Assets of the Estate Free and Clear of Liens Pursuant to Bankruptcy Code Sections 363(b) and (f); (2) Approving Payment of Compensation and Expenses to the Auctioneer; and (3) Granting Related Relief Including Use of Sale Proceeds to Pay for Actual Costs Incurred* (“Auction Motion”). Unless otherwise noted, capitalized terms herein have the meaning as set forth in the Auction Motion.

3. Except as otherwise indicated, all statements in this Declaration are based on my personal knowledge, my review of relevant documents in the Debtor’s bankruptcy case, or my opinion based upon my experience and knowledge as a panel trustee for the Central District of California. If called as a witness, I could and would competently testify thereto.

4. I have read and I am aware of the contents of the Auction Motion and the accompanying Memorandum of Points and Authorities. The facts stated in the Auction Motion and the Points and Authorities are true to the best of my knowledge.

5. The Debtor filed a voluntary petition under Chapter 7 of the United States Bankruptcy Code on June 9, 2023. A true and correct copy of the Debtor’s Schedule A/B filed on June 9, 2023 (docket number 1) is attached here as **Exhibit “1”** and incorporated herein by this reference.

6. I am informed that the Debtor manufactures and assembles firearms and miscellaneous firearm accessories. The Debtor's personal property includes metal working equipment, tooling, tools, forklift, office furniture, and office machinery. The personal property assets to be included in the online auction sale are located at the Debtor’s business premises located at 1601 Fremont Court, Ontario, California (“Business Premises”) leased by the Debtor prior to the

1 Petition Date under a Standard Industrial/Commercial Single-Tenant Lease – Gross (“Lease”) with
2 the Debtor’s landlord, Mosco Management Company (“Landlord”) that currently provides for rental
3 payments of \$13,054.37 per month. I need to liquidate the personal property in order to return the
4 Business Premises and pay any outstanding rent that may be due under the Lease as negotiated with
5 the Landlord and approved by the Court.

6 7. Through my proposed counsel, I reached out to the Debtor’s Landlord to reach an
7 agreement regarding the storing of the Assets at the Business Premises until completion of the
8 auction and with respect to the Assets remaining in the Business Premises after the online auction
9 sale.

10 8. The personal property assets to be included in the proposed online auction sale are
11 generally described as (i) metal working equipment; (ii) tooling and tools; (iii) forklift; (iv) office
12 furniture and office machinery (collectively, the “Assets”).

13 9. My proposed auctioneer, Fischer Auction Co. Inc. (“Auctioneer”) has inspected the
14 Assets and has advised that they have a total estimated gross liquidation value of approximately
15 \$120,000.00. Through the competitive bidding of an online public auction sale, it is anticipated that
16 the Estate will receive the best and highest value for the Assets and therefore, the ultimate sale price
17 of the Assets will be fair and reasonable.

18 10. I propose to liquidate the Assets by auction to the highest bidder.

19 11. I request authorization to pay the Auctioneer’s compensation and expenses pursuant
20 to the terms of the Auction Contract, a true and correct copy of which is attached here as **Exhibit**
21 **“2”** and incorporated herein by this reference.

22 12. I am informed that the Auctioneer has a blanket bond in the amount of \$250,000.00
23 made payable to the United States of America, which is on file with the Bankruptcy Court. Attached
24 here as **Exhibit “3”** is copy of the blanket bond. I am further informed that the collective value of
25 all of the Auctioneer’s current assets held for auction is less than \$250,000.00.

26 13. The Buyer’s Premium will be collected by the Auctioneer and along with the auction
27 proceeds, turned over to me no later than seven (7) calendar days after the conclusion of the auction.
28 No later than twenty-one (21) days after the conclusion of the auction, the Auctioneer will submit

1 to me a Report of Auctioneer (“Auction Report”) in compliance with the requirements of the United
2 States Trustee’s Supervisory Instruction No. 10.³ Payment of the Buyer’s Premium by the Estate
3 to the Auctioneer is subject to the Auctioneer providing me the Auction Report.

4 14. Within seven (7) days of my receipt of the Auction Report, I will file it with the Court
5 along with a declaration stating that I have compared the Auction Report to the list of items/lots
6 sold, the Auction Report is satisfactory, the gross funds have been turned over to me, and the
7 Auctioneer has been compensated pursuant to the terms of the Auction Contract and the Auction
8 Motion as approved by the Court.

9 15. Provided an Order has been entered approving payment of the Auctioneer’s
10 compensation and expenses, I will compensate the Auctioneer for the Court approved fees and
11 expenses within seven (7) calendar days of the filing with the Court of the Auction Report and the
12 my declaration.

13 16. I request the Court authorize the use of the proceeds of the auction sale to make Court
14 approved disbursements to the proposed Auctioneer pursuant to the terms of the Auction Contract
15 and the Auction Motion.

16 17. The Lease with the Landlord provides that rent due the Landlord is approximately
17 \$13,000 per month. The proposed online auction sale will be scheduled to commence shortly after
18 the Court has approved the Auction Motion. The online auction is tentatively scheduled for August
19 22, 2023 at 10:00 a.m. with a preview/inspection of the Assets by prospective buyers to take place
20 at the Business Premises on August 21, 2023 from 10:00 a.m. to 4:00 p.m.

21 18. Attached here as **Exhibit “4”** is a true and correct copy of the key pages of the UCC-
22 1 Search I had my counsel conduct.

23 19. Attached here as **Exhibit “5”** is a true and correct copy of the email exchange
24 between my counsel and the secured creditors regarding the agreement to sell the Assets.

25 ///

26 _____
27 ³ The Auction Report will include at a minimum: the date of the sale, each item sold, the sale price and the name,
28 address, and telephone number of the purchaser - in the case of lots, a brief description of each lot sold as well as the
sale price and purchaser thereof, the gross proceeds of sale, a statement that the gross proceeds have been turned over
to me, and a descriptive list of the items that were not sold but which were returned to me.

21. I request authorization to terminate and reject the Lease with the Landlord effective as of August 31, 2023. Entry of an order authorizing me to terminate and reject the Lease will assist me in the reduction of administrative costs.

Executed on July 24, 2023, at Santa Ana, California.

Charles W. Daff

EXHIBIT 1

Fill in this information to identify the case:

Debtor name Excel Industries, Inc.

United States Bankruptcy Court for the: CENTRAL DISTRICT OF CALIFORNIA

Case number (if known) _____

☐ Check if this is an amended filing

Official Form 206A/B

Schedule A/B: Assets - Real and Personal Property

12/15

Disclose all property, real and personal, which the debtor owns or in which the debtor has any other legal, equitable, or future interest. Include all property in which the debtor holds rights and powers exercisable for the debtor's own benefit. Also include assets and properties which have no book value, such as fully depreciated assets or assets that were not capitalized. In Schedule A/B, list any executory contracts or unexpired leases. Also list them on *Schedule G: Executory Contracts and Unexpired Leases* (Official Form 206G).

Be as complete and accurate as possible. If more space is needed, attach a separate sheet to this form. At the top of any pages added, write the debtor's name and case number (if known). Also identify the form and line number to which the additional information applies. If an additional sheet is attached, include the amounts from the attachment in the total for the pertinent part.

For Part 1 through Part 11, list each asset under the appropriate category or attach separate supporting schedules, such as a fixed asset schedule or depreciation schedule, that gives the details for each asset in a particular category. List each asset only once. In valuing the debtor's interest, do not deduct the value of secured claims. See the instructions to understand the terms used in this form.

Part 1: Cash and cash equivalents

1. Does the debtor have any cash or cash equivalents?

- ☐ No. Go to Part 2.
☒ Yes Fill in the information below.

All cash or cash equivalents owned or controlled by the debtor

Current value of debtor's interest

3. Checking, savings, money market, or financial brokerage accounts (Identify all)

Name of institution (bank or brokerage firm)

Type of account

Last 4 digits of account number

3.1. US Bank

Checking

5826

\$63.62

4. Other cash equivalents (Identify all)

5. Total of Part 1.

Add lines 2 through 4 (including amounts on any additional sheets). Copy the total to line 80.

\$63.62

Part 2: Deposits and Prepayments

6. Does the debtor have any deposits or prepayments?

- ☐ No. Go to Part 3.
☒ Yes Fill in the information below.

7. Deposits, including security deposits and utility deposits

Description, including name of holder of deposit

7.1. Rent Deposit held by Mosco Management Company LLC, Attn: Angelina Kirkpatrick, 98 Vista del Sol, Laguna Beach, CA 92651

\$12,337.02

8. Prepayments, including prepayments on executory contracts, leases, insurance, taxes, and rent

Description, including name of holder of prepayment

9. Total of Part 2.

Add lines 7 through 8. Copy the total to line 81.

\$12,337.02

Part 3: Accounts receivable

Official Form 206A/B

Schedule A/B Assets - Real and Personal Property

page 1

Debtor Excel Industries, Inc. Case number (If known) _____
Name

10. Does the debtor have any accounts receivable?

- ☒ No. Go to Part 4.
☐ Yes Fill in the information below.

Part 4: **Investments**

13. Does the debtor own any investments?

- ☒ No. Go to Part 5.
☐ Yes Fill in the information below.

Part 5: **Inventory, excluding agriculture assets**

18. Does the debtor own any inventory (excluding agriculture assets)?

- ☐ No. Go to Part 6.
☒ Yes Fill in the information below.

	General description	Date of the last physical inventory	Net book value of debtor's interest (Where available)	Valuation method used for current value	Current value of debtor's interest
19.	Raw materials 301 1/4 Hard Stainless Steel, size: .025 x 2.85 x Coll 49 lbs., 301 1/4 Hard Stainless Steel, size: .025 x 3.750 x Coll 305 lbs., Sticktit T Pastiles 5 lb wax, Virgin Wax 175 lbs., Zircon Sand 100 lbs., RG30 Sand 50 lbs, RG-70 Sand 300 lbs., SP-30 Remasol, Colloidal Sillica 45 Gallon, Ludox SK 30 Gallon, Stock Tube, Metal Impact P/N P1693, Receiver Tube, Material 6061T6 700 pcs		\$0.00		\$4,382.89
20.	Work in progress				
21.	Finished goods, including goods held for resale Paintless Dent Repair Tools, Hole-plugs-nylon assorted sizes, Plastic Gun Cases		\$0.00		\$1,400.00
	Products Produced (Tooling) - Excel Arms, MP-22/MR-22 Accelerator Rifle and Pistol, ACCU-TEK, AT-380II + HC-380 Pistols, Excel Arms X-Series Rifles + Pistols, Misc Tooling + Die Sets, Vises, Fixtures, etc.		\$0.00		\$285,000.00
22.	Other inventory or supplies				

Debtor Excel Industries, Inc. Case number (If known) _____
Name

Miscellaneous Firearm
Accessories (springs,
stampings, pins, screws,
grips, etc.)

\$0.00 \$8,000.00

23. **Total of Part 5.**

Add lines 19 through 22. Copy the total to line 84.

\$298,782.89

24. **Is any of the property listed in Part 5 perishable?**

☒ No
☐ Yes

25. **Has any of the property listed in Part 5 been purchased within 20 days before the bankruptcy was filed?**

☒ No
☐ Yes. Book value _____ Valuation method _____ Current Value _____

26. **Has any of the property listed in Part 5 been appraised by a professional within the last year?**

☒ No
☐ Yes

Part 6: Farming and fishing-related assets (other than titled motor vehicles and land)

27. **Does the debtor own or lease any farming and fishing-related assets (other than titled motor vehicles and land)?**

☒ No. Go to Part 7.
☐ Yes Fill in the information below.

Part 7: Office furniture, fixtures, and equipment; and collectibles

38. **Does the debtor own or lease any office furniture, fixtures, equipment, or collectibles?**

☐ No. Go to Part 8.
☒ Yes Fill in the information below.

	General description	Net book value of debtor's interest (Where available)	Valuation method used for current value	Current value of debtor's interest
39.	Office furniture Desks, Chairs, Wall Units, Credenza, Cabinet	\$0.00		\$500.00
40.	Office fixtures			
41.	Office equipment, including all computer equipment and communication systems equipment and software Phone system, Computers, Televisions	\$0.00		\$824.00

42. **Collectibles** *Examples:* Antiques and figurines; paintings, prints, or other artwork; books, pictures, or other art objects; china and crystal; stamp, coin, or baseball card collections; other collections, memorabilia, or collectibles

43. **Total of Part 7.**

Add lines 39 through 42. Copy the total to line 86.

\$1,324.00

44. **Is a depreciation schedule available for any of the property listed in Part 7?**

☒ No
☐ Yes

45. **Has any of the property listed in Part 7 been appraised by a professional within the last year?**

☒ No
☐ Yes

Debtor Excel Industries, Inc. Case number (If known) _____
Name

Part 8: Machinery, equipment, and vehicles

46. Does the debtor own or lease any machinery, equipment, or vehicles?

- ☐ No. Go to Part 9.
☒ Yes Fill in the information below.

General description Include year, make, model, and identification numbers (i.e., VIN, HIN, or N-number)	Net book value of debtor's interest (Where available)	Valuation method used for current value	Current value of debtor's interest
47. Automobiles, vans, trucks, motorcycles, trailers, and titled farm vehicles			
48. Watercraft, trailers, motors, and related accessories <i>Examples: Boats, trailers, motors, floating homes, personal watercraft, and fishing vessels</i>			
49. Aircraft and accessories			
50. Other machinery, fixtures, and equipment (excluding farm machinery and equipment) 4-slide tooling and dies, punch press dies, 4-slide machine parts, cams, rams, wire straighteners, tool holders, stock tube blanks for AR-15, tooling for target stands (stamping dies, welding fixtures), molds at HTI Plastics -accelerator rifle stock mold inserts, accelerator pistol grip mold complete including mold base, Extrusion Dies at Superior Metal Shapes Inc. pistol rib die, rifle shroud die. (Also see Attachment to Schedule A - Equipment List, etc.)	\$0.00		\$381,879.00

51. Total of Part 8.

Add lines 47 through 50. Copy the total to line 87.

\$381,879.00

52. Is a depreciation schedule available for any of the property listed in Part 8?

- ☒ No
☐ Yes

53. Has any of the property listed in Part 8 been appraised by a professional within the last year?

- ☒ No
☐ Yes

Part 9: Real property

54. Does the debtor own or lease any real property?

- ☒ No. Go to Part 10.
☐ Yes Fill in the information below.

Part 10: Intangibles and intellectual property

59. Does the debtor have any interests in intangibles or intellectual property?

- ☒ No. Go to Part 11.
☐ Yes Fill in the information below.

Part 11: All other assets

70. Does the debtor own any other assets that have not yet been reported on this form?

Include all interests in executory contracts and unexpired leases not previously reported on this form.

- ☐ No. Go to Part 12.
☒ Yes Fill in the information below.

Debtor Excel Industries, Inc.
Name

Case number (If known) _____

Current value of
debtor's interest

71. **Notes receivable**
Description (include name of obligor)
72. **Tax refunds and unused net operating losses (NOLs)**
Description (for example, federal, state, local)
73. **Interests in insurance policies or annuities**
74. **Causes of action against third parties (whether or not a lawsuit has been filed)**
75. **Other contingent and unliquidated claims or causes of action of every nature, including counterclaims of the debtor and rights to set off claims**
76. **Trusts, equitable or future interests in property**
77. **Other property of any kind not already listed** *Examples:* Season tickets, country club membership
Refund from Mohave Electric Cooperative, Inc., Payment Processing Center, PO Box 52091, Phoenix, AZ
85072-2091

\$112.00

78. **Total of Part 11.**
Add lines 71 through 77. Copy the total to line 90.

\$112.00

79. **Has any of the property listed in Part 11 been appraised by a professional within the last year?**
☒ No
☐ Yes

Debtor Excel Industries, Inc. Case number (if known) _____
Name

Part 12: Summary

In Part 12 copy all of the totals from the earlier parts of the form

Type of property	Current value of personal property	Current value of real property
80. Cash, cash equivalents, and financial assets. <i>Copy line 5, Part 1</i>	<u>\$63.62</u>	
81. Deposits and prepayments. <i>Copy line 9, Part 2.</i>	<u>\$12,337.02</u>	
82. Accounts receivable. <i>Copy line 12, Part 3.</i>	<u>\$0.00</u>	
83. Investments. <i>Copy line 17, Part 4.</i>	<u>\$0.00</u>	
84. Inventory. <i>Copy line 23, Part 5.</i>	<u>\$298,782.89</u>	
85. Farming and fishing-related assets. <i>Copy line 33, Part 6.</i>	<u>\$0.00</u>	
86. Office furniture, fixtures, and equipment; and collectibles. <i>Copy line 43, Part 7.</i>	<u>\$1,324.00</u>	
87. Machinery, equipment, and vehicles. <i>Copy line 51, Part 8.</i>	<u>\$381,879.00</u>	
88. Real property. <i>Copy line 56, Part 9.....></i>		<div><u>\$0.00</u></div>
89. Intangibles and intellectual property. <i>Copy line 66, Part 10.</i>	<u>\$0.00</u>	
90. All other assets. <i>Copy line 78, Part 11.</i>	+ <u>\$112.00</u>	
91. Total. Add lines 80 through 90 for each column	<div><u>\$694,498.53</u></div>	+ 91b. <div><u>\$0.00</u></div>
92. Total of all property on Schedule A/B. Add lines 91a+91b=92		<div><u>\$694,498.53</u></div>

In re: Excel Industries, Inc.

ATTACHMENT TO SCHEDULE A

Part 8 Machinery, equipment, and vehicles

50. Other machinery, fixtures, and equipment (excluding farm machinery and equipment)

(See Attached 5/9/2023 Equipment List, 5/10/2023 Misc. Racks Shelves, etc., and
5/10/2023 Show Exhibit Booth Paraphernalia)

EXHIBIT "1"

5/9/2023 Equipment List

Page 1

QUANTITY	DESCRIPTION	SERIAL NUMBER	VALUE
1	Tannewitz, Mod GHE-36, 36" VERT. Bandsaw	13426	\$7,000.00
1	Mod. WP60HTT, Wax Injection Machine	A206	\$650.00
1	Econoline Sandblaster	92-1417	\$50.00
1	Econoline Sandblaster	92-1421	\$50.00
1	Melco 3' x 4' Steel Autoclave	1625	\$1,700.00
1	1994 Haas Mod. VF-O, Machine Centers 20 Position A.T.C.'S Coolant Tanks	2809	\$10,000.00
1	1994 Haas Mod. VF-O, Machine Centers 20 Position A.T.C.'S Coolant Tanks	2823	\$10,000.00
1	1994 Haas Mod. VF-O, Machine Centers 20 Position A.T.C.'S Coolant Tanks	2858	\$10,000.00
1	Inductotherm Mod. VIP125-30, 125 kw Induction Heater w/power Trak & water Cooling System	93F-18615-246-11	\$35,000.00
1	Mobil 20' Mini Storage Container	SP000005	\$5,000.00
1	Hyster Mod. 535XL, 3500 LB LPG Forklift	B010B1953E	\$4,500.00
1	Ingersoll-Rand Mod. S30-10. 10 H.P. Tank Mounted Air Compressor	30T305865	\$1,000.00
1	ingersoll-Rand 5 H.P Air Compressor	30542164	\$1,000.00
1	Geil 4' x 4' x 4' gas Burnout Oven	n/a	\$500.00
1	Mod. WP-60AH, Wax injection machine	5K145DL259DF	\$2,000.00
1	Mod. WP-60AH, Wax injection machine	n/a	\$2,000.00
3	18" x 18" x 18" Square Fluid beds	n/a	\$300.00
3	Econo Mod. 30 G, Turn Table Mixers	n/a	\$1,200.00
1	Rockwell Mod. 31-501, 6" x 48" Belt Grinder	CR6602	\$200.00
1	IPS Mod. FC-80A Drill Presses	80	\$100.00
1	IPS Mod. FC-80A Drill Presses	103	\$100.00
1	IPS Mod. FC-80A Drill Presses	106	\$100.00
1	IPS Mod. FC-80A Drill Presses	145	\$100.00
1	IPS Mod. FC-80A Drill Presses	110	\$100.00
1	IPS Mod. FC-80A Drill Presses	112	\$100.00
1	IPS Mod. FC-80A Drill Presses	123	\$100.00
1	IPS Mod. FC-80A Drill Presses	143	\$100.00
1	IPS Mod. FC-80A Drill Presses	n/a	\$100.00
1	Covel 14" Optical Comparator	14-849	\$500.00
1	Benchmaster Series 150-151, Punch Press	60979	\$1,500.00
1	Well 9" Horiz. Band Saw	865689	\$3,500.00
1	Bridgeport T-Ram Vert Mill w/Power Feed	170744	\$8,000.00
1	Boyar-Schultz Mod. H612, 6" x 12" Manual Surface grinder w/Chucks	26314	\$1,500.00
1	Boyar-Schultz Mod. H612, 6" x 12" Manual Surface grinder w/Chucks	27348	\$1,500.00
1	Boyar-Schultz Mod. H612, 6" x 12" Manual Surface grinder w/Chucks	25182	\$1,500.00
1	Clark 4000 Lb L.P.G. Forklift	637-464-111	\$2,500.00
1	1979 Nilson Mod 700L, 1/32" Four Slide	106450	\$30,000.00
1	1980 Bliss Mod. C-60, 60 ton O.B.I. Punch Press 4" Stroke	H-69365	\$16,000.00
1	1985 Kent Mod KGS-1026AHD, 10" X 20" Hyd Surface Grinder	85010601	\$5,500.00
1	Dayton Speedaire Mod 52628-2.5 H.P. verticle Air Compressor	040892L-240741	\$900.00
1	Pioneer Mod. VT-315, 3 Ton Vert. Broach Machine	1758	\$5,000.00
1	Benchmaster Mod, 152-E, 5 Ton punch Press	52013	\$1,500.00

EXHIBIT "1"

Page 2

1	General 20 lb Counting Scale	77725	\$250.00
1	Logan Model 2557vh, 12" Lathe	n/a	\$2,000.00
1	Clinton 2 ton Punch Press	B2CGD5304	\$600.00
1	Lift Coil Furnace	n/a	\$3,500.00
1	4 cyl. Wax Warmer	n/a	\$200.00
1	10 cyl. Wax Warmer	n/a	\$100.00
1	10 Gal., Wax Melting Tank	n/a	\$250.00
1	Mod. WP-200-AS-84C, 25 gal. Wax Melting Tank	n/a	\$350.00
1	Granite Surface Plate 16" x 22" + cabinet	n/a	\$150.00
1	Burr-King 2" Belt Sander	n/a	\$1,000.00
1	Howe Platform Scale	n/a	\$300.00
1	big Joe 1500 LB Elec Dielift Truck	317434	\$1,300.00
1	Electric Furnace	n/a	\$480.00
1	Enerpac-H Frame Hyd Press	n/a	\$2,500.00
2	wilton Belt Sanders	n/a	\$300.00
1	Liebert Cooler	n/a	\$4,500.00
1	Nortel Phone System	n/a	\$224.00
1	Bridgeport Mod. 12/BRJ-42, 1 H.P. Vert Mill	172248	\$4,800.00
1	Bridgeport Mod. 12/BRJ-42, 1 H.P. Vert Mill	97210	\$4,800.00
1	Bridgeport Mod. 12/BRJ-42, 1 H.P. Vert Mill	45392	\$4,800.00
1	Bridgeport Mod. 12/BRJ-42, 1 H.P. Vert Mill	41768	\$2,000.00
1	Bridgeport 1 H.P. Vert Mill	183030	\$4,800.00
1	Bridgeport 1 H.P. Vert Mill	175547	\$4,800.00
1	Bridgeport 1 H.P. Vert Mill	200840	\$4,800.00
1	Barker Mod. PM Horiz. Hand Mill	4547	\$500.00
1	Barker Mod. PM Horiz. Hand Mill	2324	\$500.00
1	Kenco 20 Ton Punch Press	78015	\$1,000.00
1	Kenco 20 Ton Punch Press	78016	\$1,000.00
1	Warner Swasey Mod., WSC6, 6" x 8" Turning Ctr.	3325014	\$7,500.00
1	1993 Mitsubishi Mod., DWC90HA., CNC Wire EDM Machine	5309L670	\$9,000.00
1	Rockwell Mod., Phase 11 Hardness Tester	550	\$1,000.00
1	Haas SL-20 cnc Turning Center, Mod. SL-20TAPL	71055	\$26,000.00
1	Polishing Lathe	n/a	\$500.00
1	Polishing Lathe	n/a	\$500.00
1	Granite Surface Plate + cabinet 24" x 36"	n/a	\$700.00
1	Granite Surface Plate + cabinet 24" x 36"	n/a	\$700.00
1	LNS Bar Feed (For CNC Lathe)	n/a	\$1,200.00
1	McKenna Boiler 25HP	6874	\$2,500.00
1	Compressor 15 HP Gardner Denver Co.	258817	\$4,000.00
1	Almco Vibratory Tumbler Mod. OR-10VHE	108804	\$7,000.00
1	Sweco Vibratory Tumbler Mod., FM-10-5	10FM-365-3	\$3,000.00
1	Box Vibratory /Tumber Mod-300D (C+M Cleaning Systems)	n/a	\$1,200.00
1	Goff Blaster Mod. 2 1/2 BB	92251-50-3557	\$7,500.00
1	Goff Dust Collector Mod., 1848-EC	92181-50-3560	\$1,200.00
1	Cut off Chop Saw 20" Abrasive, 20 H.P.	n/a	\$1,000.00
1	Universal Blast Cabinet, w/Dust Collector Mod. 36P-DC100	2392	\$4,000.00
1	Regal Power Trol (Coil holder for Punch Press) mod., 750-P	66686	\$500.00
1	ESAB Mig Welder Migmaster 300 I	ME-1524126	\$600.00

EXHIBIT "1"

1	Drill Press Stand Mod. G-14	S/N 0474	\$200.00
1	Hand Tapping Machine	n/a	\$100.00
1	Barker Horz Mill, Mod. AM	836	\$700.00
1	Die Filer Cabinet	n/a	\$100.00
1	Tapping Machine, 2 heads, Mod 500	358743	\$200.00
1	Ettco Tapping Machine 4 Heads, Mod.	1007	\$400.00
1	Tumbler 3 barrel	n/a	\$75.00
1	Tumber 2 barrel	n/a	\$50.00
			\$305,679.00

EXCEL INDUSTRIES, INC

Main Document Page 22 of 33

1601 FREMONT CT

ONTARIO, CA 91761

05/10/2023 Misc. Racks Shelves, etc.

Page 4

7	Steel Mezzanine Sets, 8' x 16'	
5	Tall Pallet Racks	
3	Medium Pallet Racks	
3	Heavy Duty Die Racks	
13	Shelves Metal	
25	Benches Metal	
20	Carts, Rolling Metal	
8	Casting Shell Racks, Rolling	
12	File Cabinets	
7	Desks	
2	Wall Units	
14	Desk Chairs	
	Plus Misc cabinet, stools, Tables etc.	
	TOTAL	12,000.00

EXHIBIT "1"

EXCEL INDUSTRIES, INC
1601 FREMONT CT
ONTARIO, CA 91761

5/10/2023

SHOW EXHIBIT BOOTH PARAPHERNALIA

Page 5

2	Wood Crates, 20' Exhibit with Racks, 2 podiums, 1 display case	\$5,000.00
	Total	\$5,000.00

EXHIBIT "1"

EXHIBIT 2

Fischer Auction Co. Inc.

(619) 590-2828

8711 N. Magnolia Ave Suite 300 – Santee – CA 92071

Fax: (619) 590-0744

July 13, 2023

Charles W. Daff
2107 N. Broadway Suite 308
Santa Ana, CA 92706

RE: Excel Industries, Inc.
BK# 6:23-12477-MH

Dear Mr. Daff:

We have reviewed these assets of Excel Industries, Inc.

Metal working equipment, tooling, tools, forklift, office furniture, and office machines.

Fischer Auction Company could conduct a Public Online Auction of these assets under the following terms:

- Commission to be 10% of the gross proceeds.
- Expense allowance for advertising not to exceed \$5,000, labor not to exceed \$9,600, for a total of expenses not to exceed \$14,600.
- A 10% Buyer's Premium to be charged to all buyers, an additional 3% will be charged to all buyers and paid to Proxibid for online bidding services, an additional 3% will be charged to all buyers paying with a credit card.

Fischer Auction Company, Inc. could conduct a public online auction on Tuesday, August 22nd, 2023, at 10am with a preview inspection on Monday August 21st, 2023, from 10:00AM-4:00PM. At 1601 Fremont Court, Ontario, CA 91761. Online auction access available via <http://fischerauctions.proxibid.com>

I expect the gross proceeds of the sale to be approximately \$120,000.

We look forward to the opportunity to be of service to you.

Sincerely,

Fischer Auction Co. Inc.
Jeff Bloom
(s) Jeff Bloom

EXHIBIT 3

DUPLICATE ORIGINAL

**CONTINUATION CERTIFICATE
SURETY BOND**

**INTERNATIONAL FIDELITY INSURANCE COMPANY
ATLANTA, GA**

In Consideration of \$3,125.00 Dollars renewal premium
the term of Bond No. 0434269 in the amount of \$250,000 issued
on behalf of FISCHER AUCTION CO. INC.
located at 8711 N. MAGNOLIA AVE, STE 300
SANTEE, CA 92071

in favor of United States of America, SOUTHERN DISTRICT OF CALIFORNIA
402 W. BROADWAY, SUITE 600
SAN DIEGO, CA 92101

in connection with ANNUAL BANKRUPTCY AUCTIONEER BOND
is hereby extended for a period beginning JANUARY 9, 2022 to JANUARY 9, 2025
subject to all covenants and conditions of said bond.

This certificate is designed to extend only the life of the bond. It does not increase the amount
which may be payable thereunder. The aggregate liability of the Company under the said bond
together with this certificate shall be exactly the same as, and no greater than it would have been,
if the said bond had originally been written to expire on the date to which it is now being
extended.

*Signed, sealed and dated
OCTOBER 25, 2021

INTERNATIONAL FIDELITY INSURANCE COMPANY

By:  1-26-22

EXHIBIT "3"

**HARCO NATIONAL INSURANCE COMPANY
INTERNATIONAL FIDELITY INSURANCE COMPANY**

Member companies of IAT Insurance Group, Headquartered: 702 Oberlin Road, Raleigh, North Carolina 27605

KNOW ALL MEN BY THESE PRESENTS: That **HARCO NATIONAL INSURANCE COMPANY**, a corporation organized and existing under the laws of the State of Illinois, and **INTERNATIONAL FIDELITY INSURANCE COMPANY**, a corporation organized and existing under the laws of the State of New Jersey, and having their principal offices located respectively in the cities of Rolling Meadows, Illinois and Newark, New Jersey, do hereby constitute and appoint

LINDA C. SHEFFIELD, CONWAY C. MARSHALL, STEPHEN BEAHM, DAVID C. JOSEPH, JESSICA PALMERI, ROXANNE CRAVEN, ANDREA BECKER, CLARK P. FITZ-HUGH, DARLENE A. BORNT, CATHERINE C. KEHOE, KRISTINE DONOVAN, ELIZABETH W. KEARNEY

New Orleans, LA

their true and lawful attorney(s)-in-fact to execute, seal and deliver for and on its behalf as surety, any and all bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof, which are or may be allowed, required or permitted by law, statute, rule, regulation, contract or otherwise, and the execution of such instrument(s) in pursuance of these presents, shall be as binding upon the said **HARCO NATIONAL INSURANCE COMPANY** and **INTERNATIONAL FIDELITY INSURANCE COMPANY**, as fully and amply, to all intents and purposes, as if the same had been duly executed and acknowledged by their regularly elected officers at their principal offices.

This Power of Attorney is executed, and may be revoked, pursuant to and by authority of the By-Laws of **HARCO NATIONAL INSURANCE COMPANY** and **INTERNATIONAL FIDELITY INSURANCE COMPANY** and is granted under and by authority of the following resolution adopted by the Board of Directors of **INTERNATIONAL FIDELITY INSURANCE COMPANY** at a meeting duly held on the 13th day of December, 2018 and by the Board of Directors of **HARCO NATIONAL INSURANCE COMPANY** at a meeting held on the 13th day of December, 2018.

"**RESOLVED**, that (1) the Chief Executive Officer, President, Executive Vice President, Senior Vice President, Vice President, or Secretary of the Corporation shall have the power to appoint, and to revoke the appointments of, Attorneys-in-Fact or agents with power and authority as defined or limited in their respective powers of attorney, and to execute on behalf of the Corporation and affix the Corporation's seal thereto, bonds, undertakings, recognizances, contracts of indemnity and other written obligations in the nature thereof or related thereto; and (2) any such Officers of the Corporation may appoint and revoke the appointments of joint-control custodians, agents for acceptance of process, and Attorneys-in-fact with authority to execute waivers and consents on behalf of the Corporation; and (3) the signature of any such Officer of the Corporation and the Corporation's seal may be affixed by facsimile to any power of attorney or certification given for the execution of any bond, undertaking, recognizance, contract of indemnity or other written obligation in the nature thereof or related thereto, such signature and seals when so used whether heretofore or hereafter, being hereby adopted by the Corporation as the original signature of such officer and the original seal of the Corporation, to be valid and binding upon the Corporation with the same force and effect as though manually affixed."

IN WITNESS WHEREOF, **HARCO NATIONAL INSURANCE COMPANY** and **INTERNATIONAL FIDELITY INSURANCE COMPANY** have each executed and attested these presents
on this 31st day of December, 2018



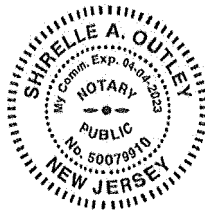
STATE OF NEW JERSEY
County of Essex

Kenneth Chapman
Executive Vice President, Harco National Insurance Company
and International Fidelity Insurance Company

STATE OF ILLINOIS
County of Cook



On this 31st day of December, 2018, before me came the individual who executed the preceding instrument, to me personally known, and, being by me duly sworn, said he is the therein described and authorized officer of **HARCO NATIONAL INSURANCE COMPANY** and **INTERNATIONAL FIDELITY INSURANCE COMPANY**; that the seals affixed to said instrument are the Corporate Seals of said Companies; that the said Corporate Seals and his signature were duly affixed by order of the Boards of Directors of said Companies.



IN TESTIMONY WHEREOF, I have hereunto set my hand affixed my Official Seal, at the City of Newark, New Jersey the day and year first above written.

Shirelle A. Outley a Notary Public of New Jersey
My Commission Expires April 4, 2023

CERTIFICATION

I, the undersigned officer of **HARCO NATIONAL INSURANCE COMPANY** and **INTERNATIONAL FIDELITY INSURANCE COMPANY** do hereby certify that I have compared the foregoing copy of the Power of Attorney and affidavit, and the copy of the Sections of the By-Laws of said Companies as set forth in said Power of Attorney, with the originals on file in the home office of said companies, and that the same are correct transcripts thereof, and of the whole of the said originals, and that the said Power of Attorney has not been revoked and is now in full force and effect.

IN TESTIMONY WHEREOF, I have hereunto set my hand on this day, 1/26/2022

A00586

Irene Martins, Assistant Secretary

EXHIBIT "3"

EXHIBIT 4



Secretary of State

Business Programs Division

1500 11th Street, Sacramento, CA 95814

SHULMAN BASTIAN FRIEDMAN & BUI LLP
LYNDA T. BUI, ESQ.
100 SPECTRUM CENTER DR
STE 600
IRVINE, CA 91618

Request Date: 06/14/2023 1:34 PM
Information
Request No.: U230041939939
Certification No.: 119832935

LIEN SEARCH CERTIFICATE

The search results herein reflect only the specific information requested. The results of this Debtor search will not reflect variances of this name. If the Debtor is known under other personal names, trade names, business entities, or addresses, separate searches of these names will have to be requested and conducted. The Secretary of State, his officers and agents disclaim any and all liability for claims resulting from other filings on which the name of the Debtor can be found in any other form than which was requested.

Search Criteria:

Debtor Organization: EXCEL INDUSTRIES INC
Request Type: Lien Information Request (UCC 11)
All Records On File (Lapsed and Unlapsed), List and All Copies

Lien Listing

Lien File No.: 117276423801 Filed: 07/05/2011 05:00 PM Lapse: 07/05/2021 11:59 PM
Lien Type: Notice of State Tax Lien

Debtor(s): EXCEL INDUSTRIES, INC., 4510 CARTER CT, CHINO, CA 91710

Secured Party(s): EMPLOYMENT DEVELOPMENT DEPARTMENT, PO BOX 826880 US

Amendment - Termination

Amendment No.: 1273256637 Filed: 08/14/2012 05:00 PM

System Amendment - Lapse

Amendment No.: U210062407927 Filed: 07/06/2021 01:00 AM

Lien File No.: 147433875628 Filed: 10/24/2014 05:00 PM Lapse: 10/24/2024 11:59 PM
Lien Type: Notice of State Tax Lien

Debtor(s): EXCEL INDUSTRIES, INC., 1601 FREMONT CT, ONTARIO, CA 91761

Secured Party(s): EMPLOYMENT DEVELOPMENT DEPARTMENT, PO BOX 826880 US

Amendment - Termination

Amendment No.: 1574644585 Filed: 05/08/2015 05:00 PM

EXHIBIT "4"

SHULMAN BASTIAN FRIEDMAN & BUI LLP
LYNDA T. BUI, ESQ.
100 SPECTRUM CENTER DR
STE 600
IRVINE, CA 91618

Request Date: 06/14/2023 1:34 PM
Information
Request No.: U230041939939
Certification No.: 119832935

Lien Listing

Lien File No.: 157445185383 **Filed: 01/13/2015 05:00 PM** **Lapse: 01/13/2025 11:59 PM**
Lien Type: Notice of State Tax Lien

Debtor(s): EXCEL INDUSTRIES, INC., 1601 FREMONT CT, ONTARIO, CA 91761

Secured Party(s): EMPLOYMENT DEVELOPMENT DEPARTMENT, PO BOX 826880 US

Amendment - Termination

Amendment No.: 1574601368 Filed: 04/15/2015 05:00 PM

Lien File No.: 157493963057 **Filed: 11/04/2015 05:00 PM** **Lapse: 11/04/2025 11:59 PM**
Lien Type: Notice of State Tax Lien

Debtor(s): EXCEL INDUSTRIES, INC., 1601 FREMONT CT, ONTARIO, CA 91761

Secured Party(s): EMPLOYMENT DEVELOPMENT DEPARTMENT, PO BOX 826880 US

Amendment - Termination

Amendment No.: 1675084573 Filed: 02/03/2016 05:00 PM

Lien File No.: 167513775779 **Filed: 03/09/2016 05:00 PM** **Lapse: 03/09/2026 11:59 PM**
Lien Type: Notice of State Tax Lien

Debtor(s): EXCEL INDUSTRIES, INC., 1601 FREMONT CT, ONTARIO, CA 91761

Secured Party(s): EMPLOYMENT DEVELOPMENT DEPARTMENT, PO BOX 826880 US

Amendment - Termination

Amendment No.: 1776223952 Filed: 12/14/2017 09:22 PM

Lien File No.: 167516519970 **Filed: 03/24/2016 05:00 PM** **Lapse: 03/24/2026 11:59 PM**
Lien Type: Notice of State Tax Lien

Debtor(s): EXCEL INDUSTRIES, INC., 1601 FREMONT CT, ONTARIO, CA 91761

Secured Party(s): EMPLOYMENT DEVELOPMENT DEPARTMENT, PO BOX 826880 US

Amendment - Termination

Amendment No.: 1776163647 Filed: 11/13/2017 06:20 PM

Lien File No.: 177568748699 **Filed: 01/30/2017 05:00 PM** **Lapse: 01/30/2027 11:59 PM**
Lien Type: Notice of State Tax Lien

Debtor(s): EXCEL INDUSTRIES, INC., 1601 FREMONT CT URY

Secured Party(s): EMPLOYMENT DEVELOPMENT DEPARTMENT, PO BOX 826880 US

Amendment - Termination

Amendment No.: 1776100851 Filed: 10/10/2017 06:16 PM

Lien File No.: 177569266201 **Filed: 02/01/2017 05:00 PM** **Lapse: 03/03/2027 11:59 PM**
Lien Type: Notice of Federal Tax Lien

Debtor(s): EXCEL INDUSTRIES INC, A CORPORATION, 1601 FREMONT CT, ONTARIO, CA 91761

Secured Party(s): IRS/OHIO, P.O. BOX 145595 US

EXHIBIT "4"

SHULMAN BASTIAN FRIEDMAN & BUI LLP
LYNDA T. BUI, ESQ.
100 SPECTRUM CENTER DR
STE 600
IRVINE, CA 91618

Request Date: 06/14/2023 1:34 PM
Information
Request No.: U230041939939
Certification No.: 119832935

Lien Listing

Lien File No.: 187660374032 **Filed: 07/23/2018 03:35 PM** **Lapse: 07/23/2028 11:59 PM**
Lien Type: Notice of State Tax Lien

Debtor(s): EXCEL INDUSTRIES, INC., 1601 FREMONT CT, ONTARIO, CA 917618309

Secured Party(s): EMPLOYMENT DEVELOPMENT DEPARTMENT, 722 CAPITOL MALL, SACRAMENTO, CA 95814

Amendment - Termination

Amendment No.: 1977071473 Filed: 04/12/2019 03:40 PM

Lien File No.: 187667385627 **Filed: 09/05/2018 03:27 PM** **Lapse: 09/05/2028 11:59 PM**
Lien Type: Notice of State Tax Lien

Debtor(s): EXCEL INDUSTRIES, INC., 1601 FREMONT CT, ONTARIO, CA 917618309

Secured Party(s): EMPLOYMENT DEVELOPMENT DEPARTMENT, 722 CAPITOL MALL, SACRAMENTO, CA 95814

Amendment - Termination

Amendment No.: 1977071425 Filed: 04/12/2019 03:40 PM

Lien File No.: 187685286344 **Filed: 12/04/2018 02:15 PM** **Lapse: 12/04/2023 11:59 PM**
Lien Type: Financing Statement

Debtor(s): EXCEL INDUSTRIES, INC., 1601 FREMONT CT, ONTARIO, CA 91761-8309
EXCEL INDUSTRIES, 1601 FREMONT CT, ONTARIO, CA 91761-8309
ACCU-TEK, 1601 FREMONT CT, ONTARIO, CA 91761-8309

Secured Party(s): PENDULUM FINANCE, 548 MARKET ST #35697, SAN FRANCISCO, CA 94104

Lien File No.: 197700788017 **Filed: 03/06/2019 03:25 PM** **Lapse: 03/06/2029 11:59 PM**
Lien Type: Notice of State Tax Lien

Debtor(s): EXCEL INDUSTRIES, INC., 1601 FREMONT CT, ONTARIO, CA 917618309

Secured Party(s): EMPLOYMENT DEVELOPMENT DEPARTMENT, 722 CAPITOL MALL, SACRAMENTO, CA 95814

Amendment - Termination

Amendment No.: 1977071595 Filed: 04/12/2019 03:41 PM

Lien File No.: 197716547037 **Filed: 06/10/2019 03:29 PM** **Lapse: 06/10/2029 11:59 PM**
Lien Type: Notice of State Tax Lien

Debtor(s): EXCEL INDUSTRIES, INC., 1601 FREMONT CT, ONTARIO, CA 917618309

Secured Party(s): EMPLOYMENT DEVELOPMENT DEPARTMENT, 722 CAPITOL MALL, SACRAMENTO, CA 95814

Amendment - Termination

Amendment No.: 1977315711 Filed: 09/04/2019 03:33 PM

EXHIBIT "4"

SHULMAN BASTIAN FRIEDMAN & BUI LLP
LYNDA T. BUI, ESQ.
100 SPECTRUM CENTER DR
STE 600
IRVINE, CA 91618

Request Date: 06/14/2023 1:34 PM
Information
Request No.: U230041939939
Certification No.: 119832935

Lien Listing

Lien File No.: 197731517091 **Filed: 09/04/2019 03:33 PM** **Lapse: 09/04/2029 11:59 PM**
Lien Type: Notice of State Tax Lien

Debtor(s): EXCEL INDUSTRIES, INC., 1601 FREMONT CT, ONTARIO, CA 917618309

Secured Party(s): EMPLOYMENT DEVELOPMENT DEPARTMENT, 722 CAPITOL MALL, SACRAMENTO, CA
95814

Amendment - Termination

Amendment No.: U200001430113 **Filed: 07/16/2020 08:33 PM**

Lien File No.: 207781678753 **Filed: 05/27/2020 08:54 AM** **Lapse: 05/27/2025 11:59 PM**
Lien Type: Financing Statement

Debtor(s): EXCEL INDUSTRIES INC, 1601 FREMONT COURT, ONTARIO, CA 91761

Secured Party(s): U.S. SMALL BUSINESS ADMINISTRATION, 10737 GATEWAY WEST, #300, EL PASO, TX
79935

Lien File No.: U230039980032 **Filed: 06/05/2023 05:00 PM** **Lapse: 12/31/9999 11:59 PM**
Lien Type: Notice of Federal Tax Lien

Debtor(s): EXCEL INDUSTRIES, INC., 1601 FREMONT COURT, ONTARIO, CA 91761

Secured Party(s): DEPARTMENT OF THE TREASURY ALCOHOL TOBACCO TAX AND TRADE BUREAU, 550
MAIN ST, SUITE 8002, CINCINNATI, OH 45202-5215

EXHIBIT 5

Erlanna Lohayza

From: Levey, Elan (USACAC) <Elan.Levey@usdoj.gov>
Sent: Friday, July 21, 2023 3:54 PM
To: Lynda T. Bui; Tanner, Jolene (USACAC)
Cc: Brooke Thompson; Anne Marie Vernon
Subject: RE: Excel Industries; 6:23:12477-MH - Subject to Fed. R. Evid 408 and Cal Evid Code 1152

Thanks for all your work on this.

Elan S. Levey | Assistant United States Attorney
United States Attorney's Office | Central District of California
300 N. Los Angeles Street | Fed. Bldg., Rm. 7516 | Los Angeles, CA 90012
T: 213.894.3997 | F: 213.894.7819 | elan.levey@usdoj.gov

From: Lynda T. Bui <LBui@shulmanbastian.com>
Sent: Friday, July 21, 2023 3:11 PM
To: Tanner, Jolene (USACAC) <JTanner@usa.doj.gov>
Cc: Brooke Thompson <BThompson@shulmanbastian.com>; Anne Marie Vernon <AVernon@shulmanbastian.com>;
Levey, Elan (USACAC) <elevey@usa.doj.gov>
Subject: [EXTERNAL] RE: Excel Industries; 6:23:12477-MH - Subject to Fed. R. Evid 408 and Cal Evid Code 1152

Dear Jolene and Elan,

Please accept this email as written understanding that the Secured Creditors (IRS, SBA and TTB) consent to the auction sale of the Assets (personal property, including metal working equipment, tooling and tools, forklift office furniture and office machinery on the Debtor's Schedule A/B) so long as the Trustee distributes the net proceeds as follows:

- 15% to unsecured priority claims
- 50% to Secured Creditors
- 30% to the Estate

A more detailed written agreement is forthcoming.

Thank you and have a great weekend.

Lynda T. Bui
Partner
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EXHIBIT "5"



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From: Tanner, Jolene (USACAC) <Jolene.Tanner@usdoj.gov>
Sent: Thursday, July 20, 2023 7:30 PM
To: Lynda T. Bui <LBui@shulmanbastian.com>
Cc: Brooke Thompson <BThompson@shulmanbastian.com>; Anne Marie Vernon <AVernon@shulmanbastian.com>;
Levey, Elan (USACAC) <Elan.Levey@usdoj.gov>
Subject: RE: Excel Industries; 6:23:12477-MH - Subject to Fed. R. Evid 408 and Cal Evid Code 1152

Lynda,

The IRS recorded its Notice of Federal Tax Lien on 2/1/2017.

To clarify, the 15% is a minimum distribution to unsecured (priority) creditors based on the net proceeds. If you're calculating it as a portion of the 50% distribution to the estate, then it would be 30% of the estate's (50%) share of the net proceeds. In other words, of the net proceeds, 50% would go to the secured creditors –IRS and SBA, 15% would go to priority creditors, and 35% would go to the trustee for admins. This arrangement is based on the assumption that there is no intervening secured claimant.

This arrangement is subject to final approval by all agencies, which we will try our best to have to you by tomorrow.

Jolene Tanner
Assistant U.S. Attorney



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